

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20544

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of  
Amendment of the Commission's  
Rules to Establish New Personal  
Communications Services

)  
) GEN Docket No. 90-314  
)  
) RM-7140, RM-7175,  
) RM-7618

To: The Commission

REPLY TO OPPOSITIONS

NYNEX Corporation, on behalf of New York Telephone Company, New England Telephone and Telegraph Company and NYNEX Mobile Communications Company (collectively "NYNEX"), submits this Reply to certain oppositions filed in response to the Petitions for Reconsideration to the Second Report and Order in the above-captioned proceeding (hereafter "Order").

I. Introduction and Summary

Approximately 43 oppositions were filed in response to the Petitions for Reconsideration of the rules adopted by the Commission for Personal Communications Services (PCS). In large part, the oppositions merely restate arguments advanced by parties in their Petitions for Reconsideration. For example, some parties continue to object to the licensing rules and oppose the number of spectrum blocks allocated for PCS<sup>1</sup>

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<sup>1</sup> See, e.g., Bell Atlantic, TDS, BellSouth and Point Communications (supporting six 20 MHz licenses); CTIA,

(Footnote Continued On Next Page)

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and the eligibility rules. Others raise technical issues concerning the requirements for licensed and unlicensed PCS systems and compatible equipment.<sup>2</sup>

While parties have advanced a dizzying array of licensing schemes, technical requirements and eligibility rules, no party has objected to NYNEX's proposal to shift the PCS spectrum blocks to facilitate interoperability between channel blocks. In our Petition for Reconsideration, NYNEX proposed that the Commission modify its basic allocation plan to position the 10 MHz spectrum blocks between the 30 MHz blocks and move the 20 MHz allocation to the higher PCS spectrum band.<sup>3</sup> This minor and simple adjustment to the PCS allocations would facilitate economic interoperability between different sized PCS blocks. This approach is also consistent with the Commission's objective to promote regional and local markets by awarding seven PCS licenses in three frequency

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1 (Footnote Continued From Previous Page)

Nextel and Florida Cellular (proposing four 20 MHz and four 10 MHz BTA-based licenses); and INS (recommending two 30 MHz MTAs, one 30 MHz BTA and three 10 MHz BTAs).

2 For example, Ameritech, APC, MCI, Motorola and Telocator (proposing an increase in base station power limits to 1000 Watts); PacBell (recommending 2400 Watts EIRP); and US West (1600 Watts EIRP). NYNEX generally concurs with parties who show that the power and antenna height rules for PCS may impede the ability of PCS licensees to effectively compete with existing cellular providers. We agree that the rules adopted in the Order should be modified to increase the PCS power and technical requirements to levels that are comparable to those which exist for cellular systems. See also, Time Warner.

3 NYNEX Petition at 2-3.

blocks.<sup>4</sup> Only MCI specifically addressed the NYNEX proposal. It fully endorsed the suggestion and urged the Commission to seriously consider shifting the PCS spectrum allocations as NYNEX described.<sup>5</sup> We urge the Commission to modify the licensing scheme as we suggest to promote more competitive deployment of PCS.

NYNEX also proposed that the Commission should modify its cellular eligibility and attribution standards in order to promote more vigorous competition. Certain parties continue to urge the Commission to adopt cellular eligibility and attribution rules that would impair the ability of LECs or their cellular affiliates to provide PCS. CIS, in its opposition, makes the unfounded claim that by obtaining more than 10 MHz of PCS spectrum, cellular carriers affiliated with local exchange carriers will somehow dominate the cellular market within their landline franchise areas.<sup>6</sup> MCI continues to suggest that the Commission should exclude the nine largest cellular carriers from PCS and objects to NYNEX's view that the cellular attribution rule should focus on control rather than an arbitrary ownership interest.<sup>7</sup> Cablevision objects to

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<sup>4</sup> Id.

<sup>5</sup> MCI at 3 n. 4.

<sup>6</sup> CIS at 1. CIS makes the baseless and implausible claim that a 10 MHz or 20 MHz PCS system provided in-region by a LEC-affiliate somehow might effectively replace a region-wide cellular operation provided by CIS in the same area. Id. at 5-6.

<sup>7</sup> MCI at 7-13. See also GCI at 10-11.

NYNEX's proposal that a sunset provision be applied to cellular eligibility rules.<sup>8</sup>

Parties that would severely limit -- or totally eliminate -- the ability of cellular carriers to provide PCS patently seek to promote their own private interests. The self-serving claims of these parties are made without a demonstration that it is necessary or desirable to preclude cellular carriers from effectively participating in PCS. The Commission must reject proposals such as these because they would inhibit the development of an environment that would enable qualified cellular participants to deliver a broad range of PCS services to the public.

II. The Full, Effective Participation of Qualified Parties is Necessary to Achieve the Commission's PCS Objectives

The Commission must reject proposals to modify the cellular carrier aggregation limits, attribution criteria and overlap rules in an arbitrary manner that would preclude LECs from providing PCS services in a meaningful manner. Parties who would have the Commission place undue limits on the participation of LEC cellular affiliates are simply attempting to secure a competitive advantage at the risk of sacrificing the public interest objectives the Commission seeks to achieve. Restricting or effectively foreclosing cellular participation in PCS would deny cellular carriers the opportunity to bring their proven expertise to the PCS arena and, ultimately, impede the development of PCS.

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<sup>8</sup> Cablevision at 8.

Bell Atlantic, for example, has demonstrated that there is no rational basis for the speculative potential for unfair competition that purportedly justifies the cellular exclusion, and that the "negative consequences of barring rather than encouraging cellular company participation in PCS make little sense from a public interest standpoint."<sup>9</sup> We agree. The cellular industry experience confirms that LEC participation in wireless industries results in highly competitive services offered at fair prices and in a timely manner. Full participation of qualified parties, including LEC cellular affiliates, is likely to result in significant public interest benefits without incurring substantial regulatory risk.

Moreover, there is no evidence to support any claims that cellular carriers or LECs will, or can, dominate the PCS marketplace. Even apart from technical issues, such as base station power and antenna height requirements, and interoperability concerns, cellular carriers face a significant cost impediment associated with the need to convert existing analog systems to digital in order to compete with technically modernized systems. These factors clearly preclude LECs or cellular companies from attaining the PCS market dominance imagined by some parties in this docket.<sup>10</sup> No credible support has been offered for the claims that the full participation of cellular carriers will somehow inhibit the competitive development of PCS.

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<sup>9</sup> Bell Atlantic at 10, citing McCaw, NYNEX and Radiofone. Id. at 10 n.25.

<sup>10</sup> See CIS at 1, cited *infra* at 3 and n.2.

Cablevision objects to NYNEX's proposal that the Commission apply sunset provisions to the LEC/cellular eligibility restrictions in order to permit market forces to dictate the PCS market after the initial auctions are conducted. Cablevision's objection to the proposed sunset provision fails to recognize that the NYNEX proposal strikes an appropriate balance between two equally important goals: to encourage new entrants to provide PCS during an initial licensing period and to permit parties with demonstrated cellular competence to participate fully in the emerging PCS industry when the marketplace warrants such participation.<sup>11</sup>

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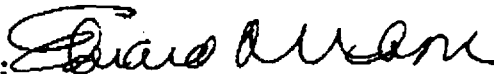
<sup>11</sup> Indeed, an example of the Commission's attempt to strike a similar balance exists in connection with the cable television cross-ownership rules. Those rules provide for waiver of the cross-ownership restriction to permit telephone companies to provide cable television service in the event that no cable service would be available to consumers absent a waiver of the ownership restriction. Similar to the cable television cross-ownership waiver rules, which permit LEC affiliates to meet customer needs in instances when others have failed to do so, the sunset provisions should be applied to eliminate eligibility restrictions in the auction aftermarket, in the event that a successful applicant decides not to use its spectrum or fails to perform as required.

### III. CONCLUSION

The reconsideration sought by NYNEX offers the Commission the opportunity to design a regulatory framework that promotes a competitively equitable and robust PCS industry. The Commission must not lose sight of its four PCS objectives: universality, speedy deployment, diversity of services and competitive delivery. We urge the Commission to strongly consider our proposals which, we believe, will further these objectives.

Respectfully submitted,

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Dated: January 13, 1994

CERTIFICATE OF SERVICE

I, Susan Markis, hereby certify that on January 13, 1994, a copy of the foregoing REPLY TO OPPOSITION in GEN Docket No. 90-314 was served on each of the parties listed on the attached Service List by first class U.S. mail, postage prepaid.

  
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